

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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LARRY GAVIN,

Petitioner,

v.

Case No. 06-20471

UNITED STATES OF AMERICA,

Respondent.

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**ORDER GRANTING MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE  
UNDER 28 U.S.C. § 2255 AND TERMINATING AS MOOT RELATED MOTIONS**

Petitioner Larry Gavin was convicted by plea of being a felon in possession of a firearm on February 27, 2007. Based on three prior violent felony convictions, this court sentenced him under the Armed Career Criminal Act (“ACCA”), 19 U.S.C. § 924(e), to a term of 210 months’ imprisonment. Petitioner has filed several motions relating to his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Beckles v. United States*, 580 U.S. \_\_\_\_ (2017). (Dkt. ## 48, 55, 57, 61.) In its most recent response, filed July 17, 2017, the government concedes that Petitioner’s prior convictions for breaking and entering under Mich. Comp. Laws § 750.110, no longer qualify for the enhancement under the ACCA, citing *United States v. Ritchey*, 840 F.3d 310 (6th Cir. 2016), and *United States v. Quarles*, 850 F.3d 836 (6th Cir. 2017). (Dkt. # 62, Pg. ID 419-20.) As a result, the statutory maximum on Petitioner’s sentence would be 120 months. Petitioner has been in federal custody since June of 2007. Thus, his new sentence will only be for “time served.”

Petitioner has an outstanding conviction for First Degree Murder in Wayne County for which he was sentenced to life imprisonment. See Third Circuit Court, Case No. 07-011302-01-FC. The government's most recent filing states that a detainer has been placed on his person so that he will be transferred to the Michigan Department of Corrections upon release from federal custody. (Dkt. # 62, Pg. ID 420.) Accordingly,

IT IS ORDERED that Petitioner's motion to vacate under 28 U.S.C. § 2255 (Dkt. # 48), is GRANTED. Petitioner is RE-SENTENCED to the time he has already served. A new Judgment and Commitment Order will follow.

IT IS FURTHER ORDERED that the remaining pending motions (Dkt. ## 54, 55, 57, 61) are TERMINATED AS MOOT.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: August 11, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 11, 2017, by electronic and/or ordinary mail.

s/Julie Owens  
Acting in the absence of Lisa Wagner  
Case Manager and Deputy Clerk  
(810) 292-6522